Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77 ORIGINAL

STATE OF TENNESSEE ..... *Plaintiff*

vs.

STATE OF ARKANSAS ..... *Defendant*

RESPONSE TO MOTION AND BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

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REQ. No. 77-16253

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RESPONSE TO MOTION FOR LEAVE TO FILE COMPLAINT

The State of Arkansas, by its Attorney General, Bill Clinton, for its response to plaintiff's motion for leave to file complaint, states:

I.

The State of Arkansas has not had sufficient time to employ an expert in this field to examine the geographical area in question or the documents claimed by plaintiff to establish its title to this geographical area.

II.

Until such time as the State of Arkansas has had an oppor-

tunity to thoroughly explore plaintiff's claim to the geographical area in question and arrive at a conclusion as to the validity of plaintiff's claim, a dispute as to the boundary line between the parties does not exist.

III.

Even assuming that a boundary dispute between the parties does exist and would normally be subject to the exclusive original jurisdiction of this Court, the dispute is not in a posture for judicial determination because each party has clearly communicated to the other its preference to resolve this matter through an interstate agreement or compact.

IV.

Neither party should unnecessarily be put to the great expense of litigation until negotiations regarding an interstate agreement or compact fail.

V.

The docket of this Court should not be burdened with unnecessary and premature litigation.

WHEREFORE, the State of Arkansas respectfully prays that this Court decline to exercise jurisdiction over this matter

at this time and deny plaintiff's motion for leave to file complaint.

Respectfully submitted,

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JUSTICE BUILDING
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BRIEF OF THE STATE OF ARKANSAS IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

I.

THE MOTION FOR LEAVE TO FILE COMPLAINT SHOULD BE *DENIED*

Although the proposed suit would involve a determination of the exact location of a portion of the eastern boundary of the State of Arkansas and as such would normally come under the jurisdiction of the Supreme Court of the United States pursuant to Article III, Section 2, Clause 2 of the Constitution, the Supreme Court should not take jurisdiction of the matter at this time for two reasons. First, the "boundary dispute" is as yet inchoate because the State of Arkansas has not had an adequate opportunity to examine the claims asserted by the State of Tennessee. Second, both parties have unambiguously expressed

the desire to settle by interstate compact or agreement any dispute that does arise.

Tennessee has not formally or informally demanded any relief whatever from Arkansas but has, instead, after a conference between their representatives, attempted to file suit in this Court.

Even assuming for the purposes of argument that a dispute does exist, it is well settled that negotiated settlements of boundary disputes are preferred over litigation in this Court. In *Colorado* v. *Kansas*, 320 U.S. 383 (1943), the Supreme Court succinctly stated a policy of caution in exercising jurisdiction over suits such as the one proposed:

> The reason for judicial caution in adjudicating the relative rights of states in such cases is that, while we have jurisdiction of such disputes, they involve the interests of quasi-sovereigns, present complicated and delicate questions, and, due to the possibility of future change of conditions, necessitate expert administration rather than judicial imposition of a hard and fast rule. Such controversies may appropriately be composed by negotiation and agreement, pursuant to the compact clause of the Federal constitution. We say of this case, as the court has said of interstate differences of like nature, that such mutual accommodation and agreement should, if possible, be the medium of settlement, instead of invocation of our adjudicatory power. *Id.* at 392; see, also, *Nebraska* v. *Wyoming*, 325 U.S. 589 (1945).

The reluctance of the Supreme Court to impose a judicial remedy before other settlement efforts of the parties have proved

fruitless was also well stated in *Hinderlider* v. *La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938):

> [R]esort to the judicial remedy is never essential to the adjustment of interstate controversies, unless the States are unable to agree upon the terms of a compact. . . . The difficulties incident to litigation have led States to resort, with frequency, to adjustment of their controversies by compact, even where the matter in dispute was a relatively simple one of a boundary. In two such cases this Court suggested "that the parties endeavor . . . to adjust their boundaries." *Id.* at 105.

II.

CONCLUSION

In light of the absence of an unambiguous dispute, the willingness of the parties to reach a negotiated compact or agreement to resolve any dispute that arises, and the need to avoid unnecessarily burdening this Court's already crowded docket, the State of Arkansas respectfully requests that plaintiff's motion for leave to file complaint be denied.

Respectfully submitted,

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